# ALEXANDER PORTER.

The name which is placed at the head of this article may not be familiar to many of the younger students of law, yet it is the name of one of the founders of American jurisprudence.

Alexander Porter was born in the County of Tyrone, Ireland, in the year 1786, so that his birth nearly synchronized with that of the present Constitution of the United States. In the year 1801 he emigrated as a mere youth to this country, and settled in Nashville, Tennessee, where he engaged in business pursuits for a time, and then studied law, being admitted to the bar in the year 1807. He remained in Tennessee in practice three years longer, and so became quite well versed in the system of common law as received there; and in the year 1810 he removed to the region now included in the State of Louisiana, and then called the Territory of Orleans. He seemed to have been attracted to the fertile Teche country, afterwards celebrated by Longfellow in the poem of "Evangeline;" but his reception there was not at first very hospitable. The story goes that at one plantation, where he stopped as a wayfarer and asked for a glass of water, the proprietor set dogs on him and drove him off the place. Porter had, however, a fine poetic revenge. In a short time it was discovered that he was the best lawyer in that region, and in 1812 the reports showed that he was engaged as counsel in every important case in his district. And not long after the same planter, who had behaved in such a ruffianly manner, was obliged to come to him with questions that concerned an estate. Porter caused him to make an abject apology, and then, by way of further expiation, to pay a royal fee.

In some way that is not entirely clear, Porter had become a scholar and a linguist, as well as an active practitioner, and he had other genial tastes. He was an enthusiastic planter, and a breeder of fine stock. Lovers of good horses long remembered that he imported thoroughbreds, among them a famous sire known as "Hark Forward." In 1821, being then thirty-five years of age, he was appointed

a judge of the Supreme Court of Louisiana, George Matthews being chief justice, and Francois-Xavier Martin an associate.

There have been few tribunals in the country of greater merit. Matthews was a Virginian gentleman, a student both of the common and the civil law. Martin was a Frenchman by birth, who had been for some twenty years a member of the bar of North Carolina, and knew both systems of jurisprudence. Porter had a similar experience, in a way, as we have seen, with perhaps greater ability as a publicist and statesman. And the condition of things in Louisiana called for such varied experience and accomplishment. When these men came to Louisiana, as they did soon after its acquisition by the United States, they found a situation that called for a great deal of hard sense, as well as copious learning. Speaking generally, the province had been under French and Spanish domination for more than centuries. At first it was governed by the general laws of France and the Custom of Paris. In 1769 some rules of Spanish law were promulgated, and from that time until the changes hereafter noted the Spanish law prevailed; but as the laws of France and Spain came remotely from the same source in Roman law, the change produced little effect. Soon after we acquired the Purchase, and in 1805, the territorial legislature, in two well considered statutes which are still substantially in force, adopted the common law of England as the basis of definition and practice in criminal matters. In 1808 a Civil Code was adopted, based to some extent on the Code Napoleon; but it did not repeal the general civil laws that prevailed in the territory, except so far as they were contrary to its terms, and so the courts had to do the best they could in the way of interpretation and construction.

This Code of 1808 was but an imperfect digest of laws, and, as Martin says in his History of Louisiana,[1] "people found a decoy, in what was held out as a beacon. The Fuero Viejo, Fuero Juezgo, Partidas, Recopilationes, Leyes de las Indias, Autos Acordados and Royal Schedules remained parts of the written law of the territory, when not repealed expressly or by necessary implication. Of these

[1] Vol. 2, chap. 14.

musty laws copies were extremely rare; a complete collection was in the hands of no one: and of very many of them not a single copy existed in the province. To explain them, Spanish commentators were consulted, and the *corpus juris civilis* and its own commentators were resorted to; and to eke out any deficiency, the lawyers who came from France or Hispaniola, read Pothier, d'Aguesseau, Dumoulin, etc."

"Courts of justice were furnished with interpreters of the French, Spanish and English languages. These translated the evidence and the charge of the court when necessary, but not the arguments of the counsel. The case was often opened in the English language, and then the jurymen who did not understand the counsel, were indulged with leave to withdraw from the box into the gallery. The defense, being in French, they were recalled, and the indulgence shown to them was enjoyed by their companions who were strangers to that language. All went together into the jury room, each contending the argument he had listened to was conclusive; and they finally agreed on a verdict in the best manner they could."

Under such circumstances, it is manifest that the courts had before them for some time a formidable task; there were conflicts of decision to be reconciled, anomalies to be reduced to order, a jurisprudence, in fact, to be created. In 1825 a new Civil Code was adopted, which was a great improvement on that of 1808; but the Spanish civil laws were not repealed until the year 1828; and thus, not only was the new code to be interpreted and applied, but the Spanish laws were continually appealed to and continually discussed, and it was not for some time after 1828 that this discussion came to an end.

One thing may be pointed out by way of compensation. The researches of the court into Spanish law, especially by Judge Porter, produced many decisions of importance on that subject; and after having been laid away so many years in our ancient reports, they may now become of sudden value as expositions of the law of our new possessions. As we know, in Porto Rico and the Philippines, Spanish law and jurisprudence are fundamental, and it seems to me

that practitioners in San Juan and Manila might well study the Reports of Louisiana from 1812 to 1840.

No code of commerce, like those of Continental Europe, was ever adopted by the Legislature of Louisiana, and the important question arose at an early day as to what should be the rule of decision in the rapidly increasing trade of the State. The existing code seemed to recognize that there was a law of commerce of some kind, and the effect of this vague reference was the subject of much dispute. Porter took a leading part in settling the question, and in deciding that the Law Merchant of England and the other States of our country, as a system, was to be followed, so far as not modified by local legislation. The matter is explained in a decision rendered by Porter in 1833.[1] This adoption of the Law Merchant was a highly proper and sensible act. It brought the increasing commerce of New Orleans in a line with that of other cities in America and England, and gave much value to the decisions of the court on such subjects. They are not much quoted now, but there was a time when they were leading authorities on such subjects as commercial paper, common carriers and marine insurance. Porter also took a large part in constructive jurisprudence in the matter of the law of evidence. When Louisiana was a Spanish possession, of course Spanish procedure prevailed, but it was hardly to be expected that such rules should continue in all matters under the American domination. As we have seen, the common law was adopted in criminal matters; and it was soon provided that a jury might be allowed also in a civil controversy, if duly demanded. No regular code of evidence having been adopted, Porter took part in decisions which recognized the general law of evidence in civil, as well as criminal cases, which prevailed in the other States of our Union. This result would seem to indicate that the court had not only learning but wisdom.[2]

The matrimonial community of acquets and gains was a part of the Spanish law in the Colony of Louisiana, and was continued in the codes of the State. It was frequently

[1] McDonald *v.* Millaudon, 5 La. 403, 408.

[2] Dranguet *v.* Prudhomme (1831) 3 La. 83, 86.

expounded by Judge Porter, and his opinions and those of his associates should be of much value in our insular possessions, where the same institution exists.

It was, however, in the domain of private international law, or the conflict of laws, that his decisions have been of almost worldwide fame. While he was at the bar and on the bench, people flocked to Louisiana from all parts of the earth; and many of them, when they had acquired a competence, went back to their domicile of origin, or to other parts of the world. So in matters of contract an active trade was carried on with other States and countries, and questions in the conflict of laws continually arose. Porter's decisions have become fundamental in this department of law, and have been often cited by such writers as Story and Wharton. A reference to a few decisions rendered or concurred in by Judge Porter may be of interest.

In Abercrombie *v.* Caffray[1], the petitioning widow claimed, under the law of Louisiana, the "marital fourth" of real estate in Louisiana, which had belonged to her late husband. The marriage had been contracted in Massachusetts, and the husband, during its existence, was domiciled in Mississippi. Porter, in delivering the opinion of the court in favor of the petitioner, reviewed English, American, Roman and Spanish authorities; and it was held that the distribution of the real estate in Louisiana must be made according to the law of the situs, and not according to that of either Massachusetts or Mississippi.

In Ory *v.* Winter,[2] a note was made in Mississippi to the order of a person domiciled there, who indorsed it over to the plaintiff, who was domiciled in Louisiana. By a statute of Mississippi, in force at the time, the maker of a note might set up any equitable defense against the bona fide endorsee which he could offer against the payee. Porter delivered the opinion on appeal, holding that the validity of the contract must be determined by the laws of the country where it was made, namely, Mississippi; and that the fact that the note was transferred to an endorsee in Louisiana could not cut off the right to set up an equitable defense, the note, by the *lex loci contractus*, being rendered practically non-negotiable.

[1] (1824) 3 Martin, N. S. 1. [2] (1826) 4 Martin, N. S. 277.

In Chartres *v.* Cairnes,[1] the question arose in an attachment suit, between citizens of States other than Louisiana, of the validity of a deed of trust made in New York to secure creditors in a certain way with certain reservations. The court thought the questions in the case difficult and unpleasant, but held that the validity of the assignment must depend on the law of New York.

The case of Saul *v.* His Creditors,[2] has been quoted very often in the text books. Saul had become insolvent, after carrying on an extensive commerce in New Orleans, and his affairs had been put in court under the State practice. The tableau of distribution, proposed by his syndics (or trustees), was hotly contested by various creditors, including John Jacob Astor of New York. Among other questions was the claim of the children of the insolvent for the amount of community property coming to them from their deceased mother, and which was in possession of their father at the time of his failure. Saul and his wife had intermarried in Virginia, where they were then domiciled, in 1794, and had removed to Louisiana in 1804. Mrs. Saul died in 1819, and in the meantime a large amount of property had been acquired, which from her death remained in the possession of her husband, the insolvent. The children claimed one-half of this property as acquets and gains made by their father and mother in Louisiana. As the case was heard in 1827, it may be assumed that the claims of the opposing creditors arose after Mrs. Saul's death. It was contended, on the part of these creditors, that as the marriage took place in Virginia, by whose laws no community of acquets and gains was permitted, the whole of the property acquired in Louisiana belonged to the husband, and must be applied to his debts. The case arose under the Code of 1808, and it was held, Porter delivering the opinion, that the claim of the children must be allowed, and it was so ordered on the ground that a community existed from the time of the removal of the spouses to Louisiana.

Judge Porter resigned his seat on the Supreme Court of Louisiana in the year 1833, and was elected to the United States Senate, where he served until 1837. He was re-elected to the Senate in 1843, and it seemed that he might have

[1] (1825) 4 Martin, N. S. 1. [2] (1827) 5 Martin, N. S. 569.

served his adopted country with distinction for many years longer. His attractive personality, his many gifts and graces, combined with his wide knowledge of public law, seemed to promise him an extended and brilliant career at Washington. But death came soon, and in 1844 he passed away, at the age of fifty-eight years.

The foregoing brief sketch will show that Judge Porter belonged to the class of constructive jurists and statesmen. As we have seen, he came to a new country, where there was much confusion both in substantive law and in procedure; and he helped to build up an excellent eclectic system. The net result of the work of the legislature and the courts, down to the time he retired from the bench, was that Louisiana, while continuing to be a civil law state in the general theory of personal relations, property and obligations, was ranged quite in line with the rest of our country in mercantile law, the law of evidence, constitutional law, and the law of crimes and offenses. The probabilities are that the jurisprudence of our insular possessions, derived originally from the same sources, will be developed in much the same way.

WILLIAM WIRT HOWE.

NEW ORLEANS.